

cash flow and financial information described in subsection 4.14, and such other information described in subsection 5.3 as the Administrative Agent may reasonably request, all in form and substance reasonably satisfactory to the Administrative Agent and (ii) the Financial Plan, in form and substance satisfactory to the Administrative Agent.

**M. Evidence of Insurance.** The Administrative Agent shall have received copies of certificates of insurance with respect to each of the insurance policies required pursuant to subsection 5.6, and the Administrative Agent shall be reasonably satisfied with the nature and scope of these insurance policies.

**N. Environmental.** The Administrative Agent shall have received one or more environmental assessment reports which, in their totality, provide a detailed environmental assessment of the Projects, in form and substance and from an independent environmental assessment firm satisfactory to the Administrative Agent, and the Administrative Agent shall be reasonably satisfied as to the amount and nature of any environmental and employee health and safety exposures to which the Borrowers and their Subsidiaries may be subject after giving effect to the Transactions, and with the plans of the Borrowers or such Subsidiaries with respect thereto.

**O. No Material Adverse Effect.** Since December 31, 2004, there shall not have occurred any event, change or condition that has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

**P. Corporate and Capital Structure, Ownership, Management, Etc.**

(i) Organizational Structure. The corporate organizational structure of the Borrowers and their Subsidiaries as of the Effective Date shall be as set forth on Schedule 4.5.

(ii) Capital Structure and Ownership. The capital structure and ownership of the Borrowers and their Subsidiaries as of the Effective Date shall be as set forth on Schedule 4.5.

**Q. Representations and Warranties; Performance of Agreements.** The Borrowers shall have delivered to the Administrative Agent an Officer's Certificate, in form and substance satisfactory to the Administrative Agent, to the effect that the representations and warranties in Section 4 hereof and in the other Transaction Documents are true and correct in all material respects on and as of the Effective Date and both before and after giving effect to the Transactions, to the same extent as though made on and as of that date, that the Borrowers have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the Effective Date, and that no Default or Event of Default has occurred on and as of the Effective Date before and after giving effect to the Transactions.

**R. Intercreditor Agreement.** The Intercreditor Agreement shall have been executed by the parties thereto.

**S. No Litigation.** There shall be no litigation or governmental, administrative or judicial actions or proceedings, actual or threatened, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or that could reasonably be expected to restrain, prevent or impose burdensome conditions on any of the Transactions.

**T. Completion of Proceedings.** All partnership, corporate, limited liability company and other proceedings taken or to be taken in connection with the Transactions shall be satisfactory in form and substance to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all such counterpart originals or certified copies of such documents as the Administrative

Agent may reasonably request (including, without limitation, consents and approvals with respect to the execution, delivery and performance by each applicable Loan Party of the Credit Agreement or the Subsidiary Guaranty, as the case may be, and the other Loan Documents and other Transaction Documents to which it is party or by which it or its assets may be bound that are to be delivered on the Effective Date, of each member of Sedora (with respect to Subsidiaries of Sedora), certified as of the Effective Date by its corporate secretary or an assistant secretary as being in full force and effect without Modification). Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable, on or prior to the Effective Date.

**U. Money Laundering.** The Administrative Agent shall have received, sufficiently in advance of the Effective Date, all documentation and other information required by bank regulatory authorities from the Loan Parties under applicable “know your customer” and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

**V. Rating Agencies.** Each of the Borrowers shall have obtained a public credit rating by each of Moody’s and S&P with respect to the Loans prior to the Effective Date.

**W. Disbursement Authorization.** The Administrative Agent shall have received before the Effective Date, in accordance with the provisions of subsection 2.1B, an originally executed Disbursement Authorization, signed by the chief executive officer or the chief financial officer of each Borrower or by any executive officer of such Borrower designated by any of the above-described officers on behalf of such Borrower in a writing delivered to the Administrative Agent.

**X. Interest Reserve Account.** The Borrowers shall have established an account (the “**Interest Reserve Account**”) with the Administrative Agent or with a financial institution satisfactory to the Administrative Agent, which account shall be governed by an account control agreement satisfactory to the Administrative Agent and which shall be funded on the Effective Date with an amount equal to \$50,000,000 from the proceeds of the Loans.

**Y. As of the Effective Date:**

(i) The representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects on and as of the Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date;

(ii) No event shall have occurred and be continuing or would result from the consummation of the borrowing contemplated by such Disbursement Authorization that would constitute a Default or Event of Default, or could reasonably be expected to have a Material Adverse Effect; and

(iii) No order, judgment or decree of any Governmental Authority shall purport to enjoin or restrain any Lender from making the Loans to be made by it on the Effective Date.

## SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to enter into this Agreement and to make the Loans and in order to induce the Agents to enter into this Agreement, each of the Borrowers represents and warrants to each Lender and each Agent, on the date of this Agreement and on the Effective Date, that the following statements are true and correct.

### 4.1 Organization and Qualification.

Each Borrower and each of its Subsidiaries is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Borrower and each of its Subsidiaries is duly qualified and is authorized to do business and is in good standing as a foreign corporation or other organization in each state or jurisdiction listed on Schedule 4.1 hereto and in all other states and jurisdictions in which the failure of such Borrower or any of such Subsidiaries to be so qualified could reasonably be expected to have a Material Adverse Effect.

### 4.2 Power and Authority.

Each of the Borrowers and the other Loan Parties are duly authorized and empowered to enter into, execute, deliver and perform this Agreement and each of the other Loan Documents to which it is a party. This Agreement has been duly and validly executed and delivered by the Borrowers and the other Loan Documents entered into on the Effective Date have been duly and validly executed and delivered by the Loan Parties party thereto. The execution, delivery and performance of this Agreement and each of the other Loan Documents have been duly authorized by all necessary action.

### 4.3 Legally Enforceable Agreement.

This Agreement is, and each of the other Loan Documents when delivered under this Agreement will be, a legal, valid and binding obligation of each Borrower and each of its Subsidiaries signatories thereto, enforceable against each of them in accordance with the respective terms of such Loan Documents, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or general equitable principals, whether applied in law or equity.

### 4.4 No Conflict.

The execution, delivery and performance by each of the applicable Loan Parties of the Loan Documents, the issuance, delivery and payment of the Notes and the Loans, and the consummation of the Transactions do not and will not (i) violate, contravene, or cause any Loan Party to be in default under, any provision of any law or any governmental rule or regulation applicable to any Loan Party, the Organizational Certificate or any other Organizational Documents of any Loan Party or any order, judgment, injunction, decree, determination or award in effect having applicability to any Loan Party, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture or loan or credit agreement or any other material agreement, contract, lease or instrument to which any Loan Party is a party or by which any of them or any of its or their property may be bound or affected, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets now owned or hereafter acquired by any Loan Party (other than any Liens created under any of the Loan Documents in favor of the Collateral Agent and the Liens created under the Second Lien Loan Documents in favor of the Second Lien Collateral Agent), (iv) require any approval or consent of

stockholders, partners or members or any approval or consent of any Person under any organizational certificate or other indenture, agreement, contract or instrument to which any Loan Party is a party or by which any of them or any of their property may be bound, except for such approvals or consents obtained on or before the Effective Date or (v) give rise to any preemptive rights, rights of first refusal or other similar rights on behalf of any Person under any Applicable Law or any provision of the Organizational Certificate or other Organizational Documents of any Loan Party or any Material Contract to which any Loan Party is a party or by which any Loan Party is bound.

#### **4.5 Capital Structure.**

As of the date hereof, Schedule 4.5 hereto states (i) the correct name of each Borrower and each Subsidiary, the jurisdiction of organization of each Borrower and each Subsidiary, and the owners of the Capital Stock of each Borrower and each Subsidiary (including the percentage ownership of each such Person) and (ii) the number of authorized and issued Capital Stock (and treasury shares) of each Borrower and each Subsidiary. Each Borrower has good title to all of the shares it purports to own of the Capital Stock of each of its Subsidiaries, free and clear in each case of any Lien (except as permitted by this Agreement). All such Capital Stock have been duly issued and are fully paid and non-assessable. As of the date hereof, no Borrower has obligated itself to make any Restricted Payment other than the Permitted Distribution. No Borrower has issued any options to purchase, or any rights or warrants to subscribe for, or any commitments or agreements to issue or sell, or any Capital Stock or obligations convertible into, shares of the Capital Stock of such Borrower or any of its Subsidiaries. Except as set forth on Schedule 4.5 hereto, as of the date hereof, to the Borrowers' Knowledge, there are no outstanding agreements or instruments binding upon the holders of a Borrower's Capital Stock relating to the ownership of its Capital Stock. As of the Effective Date, no Lender is an Affiliate of a Borrower.

#### **4.6 Licenses.**

The Loan Parties have obtained (or caused to be obtained) all material licenses, permits, approvals, easements and rights of way (and all such items are currently in full force and effect) required from any Governmental Authority having jurisdiction over each of Rhodes Ranch, Tuscany, Spanish Hills and South West Ranch, or from private parties (collectively, "**Material Licenses**") necessary or advisable (i) for the current (and each former) stage of development and usage of each Project and (ii) to ensure vehicular and pedestrian ingress to and egress to permit the current (and former) development of each of Rhodes Ranch, Tuscany, Spanish Hills and South West Ranch, in a manner consistent with the Effective Date Projections and the assumptions with respect to the Real Property Collateral set forth in the Initial Appraisal. The Loan Parties reasonably believe they will obtain on a timely basis in the Ordinary Course of Business all Material Licenses necessary or advisable (i) for the full development and usage of each Project and (ii) to ensure vehicular and pedestrian ingress to and egress as required to permit the full development and usage of each of Rhodes Ranch, Tuscany, Spanish Hills and South West Ranch, in a manner consistent with the Effective Date Projections and the assumptions with respect to the Real Property Collateral set forth in the Initial Appraisal.

#### **4.7 Corporate Names.**

During the 5-year period preceding the date of this Agreement and as of the Effective Date, no Borrower nor any Subsidiary has been known as or used any corporate, fictitious or trade names except those listed on Schedule 4.7 hereto. Except as set forth on Schedule 4.7, neither the Borrowers nor any Subsidiary has been the surviving corporation of a merger or consolidation or acquired all or substantially all of the assets of any Person.



**4.8 Business Locations; Agent for Process.**

As of the date hereof, the chief executive office and other places of business of each Borrower and each Subsidiary are as listed on Schedule 4.8 hereto. During the 5-year period preceding the date of this Agreement, neither of Borrowers nor any Subsidiary has had an office, place of business or agent for service of process other than as listed on Schedule 4.8. Except as shown on Schedule 4.8 on the date hereof, no inventory of any Borrower or any Subsidiary is stored with a bailee, warehouseman or similar Person, nor is any inventory consigned to any Person.

**4.9 Title to Properties.**

**A.** Each Borrower and each of its Subsidiaries has good and marketable title to and fee simple ownership of, or in the case of the leased Real Property Assets described on Schedule 4.9A, valid and subsisting leasehold interests in, all of its Real Property Assets (including, without limitation, the Real Property Collateral), and good title to all of its personal property, including all property reflected in the financial statements referred to in subsection 4.14 or delivered pursuant to subsection 5.3, in each case free and clear of all Liens except for Liens permitted by this Agreement. Each Borrower has paid or discharged, and has caused each Subsidiary to pay and discharge, all lawful claims which, if unpaid, could reasonably be expected to become a Lien against any properties of such Borrower or such Subsidiary that is not permitted by this Agreement, except to the extent such claim is being Properly Contested. The Liens granted to the Collateral Agent pursuant to the Collateral Documents are First Priority Liens, subject only to those Liens which are expressly permitted by the terms of this Agreement.

**B.** There are no material exceptions or material adverse matters (other than Permitted Encumbrances) affecting the Real Property Collateral that would be disclosed by a survey of the Real Property Collateral. A true, accurate and complete depiction of each Project as of the Effective Date is set forth on the maps attached hereto as Exhibit XI, and which map identifies the portions of each Project comprising the Real Property Collateral as of the Effective Date. Attached hereto as Schedule 4.9B-1 is a true, correct and complete list of all Real Property Assets (other than the Excluded Real Property Assets) owned by each Borrower and each of its Subsidiaries as of the date hereof, setting forth the name of the record owner of such Real Property Asset, the tax parcel identification number or similar designation of such Real Property Asset, and the property description (including parcel number and development) set forth in the Initial Appraisal that includes such Real Property Asset, if any. The Real Property Assets listed on Schedule 4.9B-1 include all Real Property Assets owned by a Borrower or a Subsidiary that are described in the Initial Appraisal, less and except any lots suitable for the construction of single family residences that have been conveyed in the ordinary course of business to third parties between the date of the Initial Appraisal and the date hereof. Attached hereto as Schedule 4.9B-2 is a true, correct and complete list of all real property assets which Rhodes Design and/or any SPE Subsidiary has an option, as of the date hereof, to acquire pursuant to the Tuscany Option Agreement, setting forth the name of the record owner of such real property assets, the tax parcel identification number of such real property asset, and the property description (including parcel number and development) set forth in the Initial Appraisal that includes such real property asset.

**C.** No Borrower Entity has received any notice of any material special assessment or proceeding affecting any Project, change in the tax rate or the assessed valuation of any Project or any other material changes affecting the taxes, assessments or other charges with respect to any Project which is not reflected in the title reports provided to the Administrative Agent prior to the Effective Date pursuant to subsection 3.1G(iv). Other than those disclosed on Schedule 4.9C, to the Borrowers' Knowledge there are no special assessment districts, or plans for the same, or for any other scheme that would involve the imposition of taxes, in each case relating to any Project. There are no zoning or other land-use regulation

proceedings or known change or proposed change in any applicable laws, regulations or the Entitlements which could detrimentally and materially affect the use, value, development or operation of any Project, including the Real Property Collateral.

#### **4.10 Priority of Liens; UCC-1 Financing Statements.**

**A.** As of the Effective Date, each of the Liens in the Collateral granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to any of the Collateral Documents (i) will (when (but only to the extent) any UCC-1 Financing Statements and/or other filings, recordations or control agreements required under or in respect of such Collateral Documents in appropriate form are filed or recorded in the appropriate offices of Governmental Authorities or are executed and delivered, as applicable) constitute valid and fully perfected security interests under the UCC or other Applicable Law in all of the Collateral described therein and (ii) will be a First Priority Lien.

**B.** UCC-1 Financing Statements containing a correct, complete and adequate description of the Collateral have been delivered to the Administrative Agent for filing in the office of the Secretary of State of the State of organization of each Loan Party and the State in which each Project is located, and for recording in the official records of the county in which each Project is located, to the extent necessary to establish under the UCC a valid and perfected lien in favor of the Collateral Agent, for the benefit of the Secured Parties, in all Collateral in which a lien may be perfected by filing a UCC-1 Financing Statement, and no further or subsequent filing, recording or registration is necessary in any such jurisdiction or elsewhere in respect of Collateral that may be perfected by filing a UCC-1 Financing Statement, except as provided under the UCC with respect to the filing of continuation statements or in connection with any change in the name, identity or location of any such Loan Party.

#### **4.11 No Subordination.**

There is no agreement, indenture, contract or instrument to which the Borrowers or any of their Subsidiaries is subject or by which the Borrowers or their Subsidiaries may be bound that requires the subordination in right of payment of any of Borrowers' obligations under this Agreement to any other obligations of Borrowers.

#### **4.12 Permits; Licenses; Franchises.**

The Borrowers and each of their Subsidiaries possess, in accordance with all Applicable Laws, and without conflict with the rights of any third parties, all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade names, trade name rights, patents, patent rights and fictitious name rights necessary to enable them to conduct the business (i) in which they are now engaged as of the Effective Date and (ii) in which they are contemplated to be engaged on and after the Effective Date (including, without limitation, the development of each Project as contemplated by the Initial Appraisal, the applicable Development Agreement and/or the Effective Date Projections), subject, in the case of clause (ii), to the receipt of further permits and licenses with respect to additional subdivisions as each Project is more fully developed, as contemplated by the Initial Appraisal, the applicable Development Agreements and/or the Effective Date Projections, except, in each case, to the extent the failure to obtain or possess any of the foregoing could not reasonably be expected to result in a Material Adverse Effect. The Borrowers reasonably believe that all such further permits and licenses will be received in a timely manner in the Ordinary Course of Business, consistent with the Effective Date Projections.

**4.13 Indebtedness.**

As of the Effective Date, the Borrowers and their Subsidiaries have no Indebtedness except for Indebtedness permitted pursuant to subsection 6.1.

**4.14 Financial Condition; Pro Forma Balance Sheet; Projections.**

**A. Financial Statements.** The Borrowers have heretofore delivered to the Lenders, at the Lenders' request, (i) audited annual combined consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Sagebrush and its Subsidiaries and Affiliates for Fiscal Years 2002, 2003 and 2004, (ii) unaudited combined consolidated balance sheets and related statements of income of the Borrowers and their Subsidiaries for the nine months ending September 30, 2005 and (iii) unaudited combined consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Sagebrush and its Subsidiaries and Affiliates thereof for the nine months ending September 30, 2005, together with all supporting documentation for any of the foregoing reasonably requested by the Administrative Agent, which financial statements are not be materially inconsistent with the financial statements or forecasts previously provided to the Administrative Agent. All such statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position (on a consolidated basis) of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated basis) of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure required in accordance with GAAP. Except as set forth on Schedule 4.14, neither the Borrowers nor any of their Subsidiaries have, as of the Effective Date, any Contingent Obligation, contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the financial statements referred to in the preceding clauses of this subsection or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrowers and their Subsidiaries taken as a whole.

**B. Effective Date Projections.** On and as of the Effective Date, the projections of the Borrowers and their Subsidiaries for the period from the Effective Date through the Fiscal Year ending December 31, 2010 (including, without limitation, the projections contained in the Financial Plan delivered prior to the Effective Date) previously delivered to the Lenders (the "**Effective Date Projections**") are based on good faith estimates and assumptions made by the management of the Borrowers at the time the Effective Date Projections were prepared, it being recognized, however, that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by the Effective Date Projections may differ from the projected results and that the differences may be material. Notwithstanding the foregoing, as of the Effective Date, the management of the Borrowers believed that (i) the estimates and assumptions underlying the Effective Date Projections were reasonable in light of the circumstances in effect on the Effective Date and (ii) the Effective Date Projections were reasonable and attainable.

**4.15 Disclosure.**

The representations and warranties of each of the Borrowers and their Subsidiaries contained in the Transaction Documents and the information contained in the other documents, certificates and written statements (including the Confidential Information Memorandum but excluding any projections or pro forma financial information) furnished to any of the Agents or the Lenders by or on behalf of any Borrower or any of its Subsidiaries for use in connection with the transactions contemplated by this

Agreement or any other Transaction Document, when considered with all other information then provided, do not contain, as at its date and as of the Effective Date, any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and financial information prepared to give effect to the Transactions and contained in such materials are based upon good faith estimates and assumptions believed by the Borrowers to be reasonable at the time made and at the Effective Date, it being recognized by the Agents and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and that the differences may be material. There is no fact known to any Borrower that has had, or could reasonably be expected to result in, a Material Adverse Effect and that has not been disclosed herein or in such other documents, certificates and statements furnished to the Lenders for use in connection with the transactions contemplated hereby.

#### **4.16 Solvent Financial Condition.**

Each Borrower and each of its Subsidiaries is now Solvent and, after giving effect to the Loans to be made hereunder and the consummation of the Transactions, each Borrower and, after giving effect to all rights of contribution, reimbursement and subrogation arising in connection with the Subsidiary Guaranty, each of its Subsidiaries, will be Solvent.

#### **4.17 Surety Obligations.**

Except as set forth on Schedule 4.17 hereto on the date hereof, the Borrowers and their Subsidiaries are not obligated as surety or indemnitor under any surety or similar bond or other contract issued or entered into any agreement to assure payment, performance or completion of performance of any undertaking or obligation of any Person.

#### **4.18 Taxes.**

The FEIN of each Borrower and each of its Subsidiaries, on the date hereof, is as shown on Schedule 4.18 hereto. Each Borrower and each of its Subsidiaries has filed all federal, state and other material Tax returns and other reports it is required by law to file and has paid, or made provision for the payment of, all Taxes shown on such returns to be due and payable, together with all other material Taxes upon it, its income and properties as and when such Taxes are due and payable, except to the extent being Properly Contested. The provision for Taxes on the books of each Borrower and each of its Subsidiaries are adequate for all years not closed by applicable statutes, and for its current Fiscal Year. The Borrowers are not aware of any proposed material Tax assessment against any Loan Party.

#### **4.19 Brokers.**

Except as set forth on Schedule 4.19, there are no claims against any Borrower or amounts owing or to be owed by any Borrower for brokerage commissions, finder's fees or investment banking or similar fees in connection with the Transactions. Each of the Borrowers hereby indemnifies the Agents and the Lenders against, and agrees that it will hold the Agents and the Lenders harmless from, any claim, demand or liability for any such commission or broker's or finder's fees or investment banking or similar fees alleged to have been incurred in connection herewith or therewith, and any claim, demand or liability relating thereto, and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.



**4.20 Intellectual Property.**

Each Borrower and each of its Subsidiaries owns or has the lawful right to use all Intellectual Property necessary for the present and planned future conduct of its business without, to Borrowers' Knowledge, any conflict with the rights of others except to the extent the failure to own or possess any such right to use or any such conflict could not reasonably be expected to result in a Material Adverse Effect; there is no objection to, or pending (or, to the Borrowers' Knowledge, threatened) claim with respect to, such Borrower's or any of its Subsidiaries' right to use any such Intellectual Property (except to the extent any such objection or claim could not reasonably be expected to result in a Material Adverse Effect and such Borrower is not aware of any grounds for challenge or objection thereto; and, except as may be disclosed on Schedule 4.20 hereto, none of the Borrowers nor any of their Subsidiaries pay any royalty or other compensation to any Person for the right to use any Intellectual Property (other than with respect to off-the-shelf or prepackaged software). All patents, trademarks, service marks, tradenames, copyrights, licenses and other similar rights of the Loan Parties, as of the date hereof, are listed on Schedule 4.20 hereto, to the extent they are registered under any Applicable Law or applications for registration thereof have been made under any Applicable Law.

**4.21 Governmental Authorization.**

Each Borrower and each of its Subsidiaries has, and is in good standing with respect to, all Governmental Authorizations necessary to continue to conduct its business as heretofore or proposed to be conducted by it and to own or lease and operate its properties as now owned or leased by it, except where the failure to have such Governmental Authorization could not reasonably be expected to have a Material Adverse Effect.

**4.22 Compliance with Laws.**

Each Borrower, each of its Subsidiaries, each Project and the use and operations of each Project are in compliance in all material respects with, the provisions of all Applicable Laws (other than Environmental Laws) and there have been no citations, notices or orders of noncompliance issued to such Borrower or any of the Subsidiaries under any such law, rule or regulation. Each Borrower and each of its Subsidiaries is in compliance with all Environmental Laws applicable to it and properties owned by it except to the extent failure to be in compliance could not reasonably be expected to have a Material Adverse Effect.

**4.23 Burdensome Contracts.**

None of the Borrowers nor any of their respective Subsidiaries is a party or subject to any contract, agreement, or charter or other corporate restriction, which has or (after giving effect to the transactions contemplated by this Agreement) could be reasonably expected to have a Material Adverse Effect.

**4.24 Litigation.**

Except as set forth on Schedule 4.24 hereto, there are no actions, suits, proceedings or investigations pending or, to the Borrowers' Knowledge, threatened on the date hereof against or affecting the Borrowers or any of their Subsidiaries, or the business, operations, properties, prospects, profits or condition of the Borrowers or any of their Subsidiaries, (i) which relate to any of the Loan Documents or any Material Contract, or any of the transactions contemplated thereby or (ii) which could reasonably be expected to have a Material Adverse Effect. Neither the Borrowers nor any of their

Subsidiaries is in default on the date hereof with respect to any order, writ, injunction, judgment, decree or rule of any court, Governmental Authority or arbitration board or tribunal.

**4.25 No Defaults.**

No event has occurred and no condition exists which would, upon or after the execution and delivery of this Agreement or such Borrower's performance hereunder, constitute a Default or an Event of Default. None of the Borrowers nor any of their respective Subsidiaries is in default, and no event has occurred and no condition exists which constitutes or which with the passage of time or the giving of notice or both would constitute a default, (x) in the payment of any Indebtedness of such Borrower or any Subsidiary to any Person which would result in a Default or Event of Default hereunder or that could reasonably be expected to have a Material Adverse Effect or (y) under any Material Contract.

**4.26 Leases.**

Schedule 4.26 hereto is a complete listing of each Capitalized Lease and Operating Lease of each Borrower and each of its Subsidiaries on the date hereof that provides for payments in excess of \$7,500,000 over the term of such Capitalized Lease or Operating Lease. Each Borrower and each of its Subsidiaries is in substantial compliance with all of the terms of each of its respective Capitalized Leases and Operating Leases and there is no basis upon which the lessors under any such leases could terminate the same prior to the scheduled maturity or stated termination date thereof or declare such Borrower or any of its Subsidiaries in default thereunder, which, in any case, would result in a Default or Event of Default hereunder or that could reasonably be expected to have a Material Adverse Effect.

**4.27 Employee Benefit Plans.**

**A.** Except as disclosed on Schedule 4.27 hereto, neither any of the Borrowers nor any of their Subsidiaries nor any of their ERISA Affiliates maintains, contributes or participates in or may incur any liability under any Pension Plan as of the date hereof. Each of the Borrowers and their Subsidiaries and each of their ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code with respect to each Pension Plan and Borrower Pension Plan, and have performed all their obligations under each Pension Plan and Borrower Pension Plan, except those where failure to perform such obligations could not reasonably be expected to result in material liability to any Borrower or any Subsidiary. With respect to each Pension Plan and Borrower Pension Plan, no material liability to the PBGC (other than required premium payments), the Internal Revenue Service, any such Pension Plan or Borrower Pension Plan or any trust established under Title IV of ERISA has been, or is expected by any of the Borrowers or any of their Subsidiaries or any of their ERISA Affiliates to be, incurred by any of the Borrowers or any of their Subsidiaries or any of their ERISA Affiliates.

**B.** No ERISA Event has occurred or could reasonably be expected to occur which has resulted or is reasonably likely to result in any material liability to any Borrower or any Subsidiary. No fact or situation that could reasonably be expected to have a Material Adverse Effect exists with respect to any Pension Plan or Borrower Pension Plan.

**C.** Except as could not reasonably be expected to result in material liability to any Borrower or any Subsidiary, no Borrower nor any of their Subsidiaries maintains or contributes to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employees of such Borrower or

any Subsidiary other than as required under Section 4980B of the Internal Revenue Code or Part 6 of Subtitle B of Title I of ERISA.

**D.** Except as could not reasonably be expected to result in material liability to any Borrower or any Subsidiary, no Pension Plan has any “unfunded benefit liability” as defined in Section 4001(a)(18) of ERISA (but excluding from the definition of “current value” of “assets” of such Pension Plan, accrued but unpaid contributions).

**E.** Except as could not reasonably be expected to result in material liability to any Borrower or any Subsidiary, each Borrower and its Subsidiaries and each ERISA Affiliate has complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and is not in “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan. Neither any of the Borrowers nor any of their Subsidiaries nor any of their ERISA Affiliates has incurred or could reasonably be expected to incur any withdrawal liability in connection with a Multiemployer Plan.

#### **4.28 Trade Relations.**

There exists no actual or, to the Borrowers’ Knowledge, threatened termination, cancellation or material limitation of, or any materially adverse Modification or change in, the business relationship between any Borrower or any Subsidiary and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of the Loan Parties, taken as a whole, or with any material supplier, contractor, builder or group of suppliers, contractors or builders and there exists no condition or state of facts or circumstances which could reasonably be expected to have a Material Adverse Effect or prevent such Borrower or any Subsidiary from conducting such business after the consummation of the transactions contemplated by this Agreement in substantially the same manner as it has heretofore been conducted.

#### **4.29 Labor Relations.**

Except as described on Schedule 4.29 hereto, neither the Borrowers nor any of their Subsidiaries is a party to any collective bargaining agreement on the date hereof. On the date hereof, there are no material grievances, disputes or controversies with any union or any other organization of the Borrowers and their Subsidiaries.

#### **4.30 Not a Regulated Entity.**

No Loan Party is (i) an “investment company” or a “person directly or indirectly controlled by or acting on behalf of an investment company” within the meaning of the Investment Company Act of 1940; (ii) a “holding company,” or a “subsidiary company” of a “holding company,” or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company,” within the meaning of the Public Utility Holding Company Act of 1935; or (iii) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Indebtedness.

#### **4.31 Margin Stock.**

Neither any Borrower nor any Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

**4.32 No Material Adverse Change.**

Since December 31, 2004, no event or change has occurred that has caused or evidences or could reasonably be expected to cause or evidence, either individually or in the aggregate, a Material Adverse Effect.

**4.33 Environmental Matters.**

Except as disclosed on Schedule 4.33 hereto, as of the date hereof:

(i) Each Borrower, each of its Subsidiaries (including, without limitation, all operations and conditions at or in the Real Property Assets), and, to the Borrowers' Knowledge, each of the tenants under any leases or occupancy agreements affecting any portion of any Real Property Assets, are in compliance with all applicable Environmental Laws (which compliance includes, but is not limited to, the possession by any Borrower, each of its Subsidiaries and each of such tenants of all permits and other Governmental Authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof), except where failure to be in compliance could not reasonably be expected to result in a Material Adverse Effect. Neither any Borrower nor any of its Subsidiaries, nor, to the Borrowers' Knowledge, any tenants under any leases or occupancy agreements affecting any portion of the Real Property Assets has received any communication, whether from a Governmental Authority, citizens group, employee or otherwise, alleging that any Borrower, any of its Subsidiaries, or any such tenant is not in such compliance, and to the Borrowers' Knowledge there are no past or present actions, activities, circumstances conditions, events or incidents that could reasonably be expected to prevent or interfere with such compliance in the future, except in each case to the extent the failure to be in compliance could not reasonably be expected to result in a Material Adverse Effect.

(ii) There is no Environmental Claim pending or, to the Borrowers' Knowledge, threatened against any Borrower or any of its Subsidiaries or, to the Borrowers' Knowledge, against any Person whose liability for any Environmental Claim any Borrower or any of its Subsidiaries has retained or assumed either contractually or by operation of law, in each such case which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(iii) There are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the Release or presence of any Hazardous Material, which could reasonably be expected to form the basis of any Environmental Claim against any Borrower or any of its Subsidiaries, or to the Borrowers' Knowledge, against any Person whose liability for any Environmental Claim any Borrower or any of its Subsidiaries has retained or assumed either contractually or by operation of law, in each such case which could reasonably be expected to result in a Material Adverse Effect.

(iv) Each Borrower and each of its Subsidiaries have not, and to the Borrowers' Knowledge, no other Person has placed, stored, deposited, discharged, buried, dumped or disposed of Hazardous Materials on, beneath or adjacent to any property currently or formerly owned, operated or leased by any Borrower or any of its Subsidiaries, in each case, which, individually or in the aggregate, which could reasonably be expected to result in a Material Adverse Effect.